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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

CITIZENS CONCERNED OVER
WESTMONT EXPANSION,

Appellant,

v.

COUNTY OF SANTA BARBARA, et al.

Respondents.

WESTMONT COLLEGE,

Real Party in Interest.

2d Civil No. B206171
(Super. Ct. No. 01244185)
(Santa Barbara County)

Citizens Concerned over Westmont Expansion appeals from the judgment denying its petition for a writ of administrative mandate. Appellant challenges the approval by respondents, Santa Barbara County (County) and the County Board of Supervisors (Board), of a project to expand the campus of Westmont College (Westmont), real party in interest. Appellant contends that a Final Subsequent Environmental Impact Report (FSEIR) violated the California Environmental Quality Act (CEQA). (Pub. Resources Code, § 21000 et seq.)¹ The violation allegedly occurred because (1) the FSEIR used the wrong baseline in determining the project's environmental impacts, and (2) as the "no

¹ All further statutory references are to the Public Resources Code.

project" alternative, the FSEIR erroneously selected a 1993 approved Master Plan at buildout instead of the existing setting. We affirm.

Factual and Procedural Background

Westmont is a liberal arts college located in the unincorporated residential community of Montecito. It consists of 52 buildings comprising 378,508 square feet on approximately 108 acres.

A 1946 County ordinance permitted Westmont to operate as an educational institution. It was required to obtain a conditional use permit (CUP) from the County for any future expansion. The original CUP, issued in 1953, was revised numerous times. In 1964 a "Master Plan for Westmont College" was approved.

In 1974 a CUP was issued that superseded all prior CUPs. The 1974 CUP states that the County adopted "[a]n updated Master Plan . . . showing existing buildings, unconstructed future additions and . . . possible future buildings" The 1974 Master Plan uses dotted lines to show outlines of the following future buildings: residence halls, a student union complex, a science complex, a "chapel-auditorium," and a building designated only as "future expansion." A negative declaration was issued after environmental review under CEQA.²

A revised CUP was issued in 1976. The CUP permitted Westmont to expand its enrollment from 800 to a maximum of 1,200 students. The CUP states that the County adopted an updated Master Plan showing both existing buildings and "the use and capacity of approved, future buildings." The 1976 Master Plan uses dotted lines to show outlines of the same future buildings shown on the 1974 Master Plan. According to the 1976 Master Plan, the future buildings will contain 225 beds, 500 classroom seats, 500 student union seats, and 1800 auditorium seats.

² " 'Negative declaration' means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report." (§ 21064.)

Neither the 1974 nor the 1976 Master Plan indicated the square footage of the future buildings. The 1974 and 1976 CUPs declared that the size, shape, seating capacity, and architectural design of the future buildings would be subject to review and approval by appropriate agencies.

Prior to the issuance of the 1976 CUP, the County prepared an environmental impact report (EIR) entitled, "Final Westmont College Proposed Enrollment Expansion Environmental Impact Report." The EIR examined the expansion's environmental impacts relating to traffic, parking, noise, growth-inducement, and community services including water and sewerage.

In 1979 the County Planning Commission approved Westmont's request to change the 1976 Master Plan to relocate one of the future residence halls, to enlarge the existing dining commons building instead of constructing a new student union complex, and to allow construction of a future post office and bookstore as part of a dining commons complex. The 1979 Master Plan differs from the 1976 Master Plan in that the former (1) shows the relocated future residence hall and the proposed enlargement of the dining commons building; (2) redesignates the future student union complex as a "future academic building"; (3) shows a future post office and bookstore near the enlarged dining commons building; and (4) relocates the future chapel-auditorium. The relocation of the chapel-auditorium was necessary to make room for the bookstore and the enlargement of the dining commons.

In 1983 the County Planning Commission approved Westmont's request to construct a proposed science building. A Commission staff report noted: "The proposed science building . . . is the first of three science complex buildings approved on the adopted Master Plan."

Following a 1990 negative declaration, the Master Plan was updated in 1991 and 1993. The 1993 Master Plan shows the same future buildings as the 1979 Master Plan.

In April 2000 Westmont applied to the County to revise its CUP and to approve an updated Master Plan. Westmont proposed a program of construction and demolition that would increase its building area by 371,860 square feet to a total of 750,368 square feet.

The FSEIR was issued in February 2006. As the baseline for its analysis of the environmental impacts of the proposed Master Plan, the FSEIR used the 1993 approved Master Plan at buildout. The FSEIR noted that, pursuant to the 1993 Master Plan, the following structures had been approved but not yet constructed: six academic buildings, one residence hall complex, a chapel-auditorium, and "[a]dditions to the Dining Commons, including a new post office and bookstore."

The FSEIR considered "[f]our methodologies . . . to establish a reasonable conservative estimate for future structural development under the [1993] Approved Master Plan" The FSEIR adopted what it determined to be the lowest reasonable estimate: 200,000 square feet. This meant that the incremental difference between the 1993 approved Master Plan at buildout (baseline) and the proposed Master Plan at buildout would be 171,860 square feet ($371,860 - 200,000 = 171,860$).

As to each environmental issue, the FSEIR analyzed "*1. Impacts resulting from the [1993] Approved Master Plan at Buildout as compared to the existing setting; [¶] 2. Impacts resulting from the Proposed Plan at Buildout as compared to the existing setting; and [¶] 3. A comparison of the incremental change in impacts between the [1993] Approved Master Plan at Buildout and the Proposed Master Plan at Buildout.*" In considering alternatives to the proposed Master Plan, the FSEIR assumed that the "no project" alternative under CEQA would be the 1993 approved Master Plan at buildout with the additional 200,000 square feet of building area.

The FSEIR was later revised to reflect changes in the proposed Master Plan "to further reduce impacts identified" in the FSEIR. Among these changes was a reduction in "the overall square footage of net new development by approximately 23,000" square feet. With this reduction, the proposed Master Plan included 345,837 square feet of "net

new development," 145,837 square feet more than that permitted under the 1993 approved Master Plan.

In November 2006 the Montecito Planning Commission approved the proposed Master Plan and a revised CUP. It also certified the FSEIR. Appellant's appeal to the Board was denied. Appellant subsequently filed a petition for a writ of administrative mandate.

Standard of Review

"In reviewing an agency's compliance with CEQA in the course of its legislative or quasi-legislative actions, the courts' inquiry 'shall extend only to whether there was a prejudicial abuse of discretion.' [Citation.] Such an abuse is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Citations.] [¶] An appellate court's review of the administrative record for legal error and substantial evidence in a CEQA case, as in other mandamus cases, is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision; in that sense appellate judicial review under CEQA is de novo. [Citations.]" (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426, fns. omitted.)

"Whether an 'agency has employed the correct procedures,' is reviewed 'de novo . . . "scrupulously enforc[ing] all legislatively mandated CEQA requirements" [citation] [Citation.] But an 'agency's substantive factual conclusions' are 'accord[ed] greater deference.' [Citation.] 'In reviewing for substantial evidence, the reviewing court "may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable," for, on factual questions, our task "is not to weigh conflicting evidence and determine who has the better argument." [Citation.]' [Citation.]" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 531, quoting from *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra*, 40 Cal.4th at p. 435.)

"As a result of this standard [of review], 'The court does not pass upon the correctness of the EIR's environmental conclusions, but only upon its sufficiency as an informative document.' [Citation.]" (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.) "Where an EIR is challenged as being legally inadequate, a court presumes a public agency's decision to certify the EIR is correct, thereby imposing on a party challenging it the burden of establishing otherwise. [Citations.]" (*Sierra Club v. City of Orange, supra*, 163 Cal.App.4th at p. 530.)

Baseline

" 'Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.' [Citations.]" (*Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 119-120.)

Appellant contends that the FSEIR used the wrong baseline: the 1993 approved Master Plan at buildout with its 200,000 square feet of future building area. Appellant maintains that the baseline should have been the Westmont campus in its existing condition. Appellant argues: "The County's use of an improper baseline contaminates the entire FSEIR, by substantially understating the project's impacts, tainting the findings of significance, and avoiding mitigation measures that are necessary to address the project's true impacts." This is a procedural matter that we review de novo.

As supporting authority, appellant cites *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350 (hereafter *EPIC*). In *EPIC* the court held that two EIRs were deficient because they had used the wrong baseline: unrealized conditions theoretically allowed under an existing general plan. The court concluded that the baseline should have been the existing environment. " . . . *EPIC* and similar cases 'hold that, in assessing the impacts of a project proposed for an undeveloped piece of property, agencies should compare project impacts against the *existing environment*, rather than some hypothetical, impacted future environment that

might occur without the project under existing general plan and/or zoning designations.' [Citation.]" (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 709-710.)

EPIC is distinguishable. The FSEIR's baseline does not take into account future building construction theoretically permissible under an existing general plan or zoning. Instead, it takes into account future building construction specifically permitted under an approved Master Plan subjected to CEQA environmental review. That review resulted in the issuance of a negative declaration in 1974 and 1990, as well as an EIR in 1976.

Where, as here, a project has been approved following environmental review, a subsequent EIR may use the approved project at buildout as a baseline against which to assess the environmental impacts of a proposed revision of that project. (See *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 242-243 [proper for EIR to use as its baseline a prior approved mining project that had already undergone environmental review]; *Temecula Band of Luiseno Mission Indians v. Rancho California Water Dist.* (1996) 43 Cal.App.4th 425, 439 [since water district had issued a negative declaration as to 1984 program, "judicial review of the [proposed] Project's potential environmental effects is limited to incremental effects of the Project as compared to the 1984 Program"]; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1477 & fn. 10, 1483-1484 [in determining environmental impacts of relocation and modification of a winery that had been previously approved following CEQA review, county properly considered only the incremental differences between the original approved project and the proposed relocation project].) The *Benton* court noted that *EPIC* was distinguishable because the project in question there had not "undergone an earlier, final CEQA review." (*Id.*, at p. 1477, fn. 10.)

In its reply brief, appellant acknowledges that "[w]here prior environmental review has occurred . . . the existing environmental setting may include what has been approved following CEQA review." But appellant contends that "[t]he administrative

record is simply void of any evidence that the County has ever previously approved 200,000 square [feet] of new construction at Westmont."

We disagree. The Master Plans from 1974 onwards show the outlines of approved future buildings. The 1976 CUP states that the County adopted an updated Master Plan showing both existing buildings and "the use and capacity of *approved*, future buildings." (Italics added.) Appellant does not question the methodology used to arrive at the 200,000 square feet estimate.³ In any event, this estimate is a factual determination, and appellant has failed to carry its burden of showing that the methodology does not constitute substantial evidence supporting that determination.

Our conclusion is consistent with the trial court's: "Westmont had an approved master plan which it was reasonable to interpret as including approved buildings. Therefore, use of that level of development as the baseline was proper."

Appellant argues that, even if the county approved an additional 200,000 square feet of building area, "there is no evidence . . . the 200,000 additional square feet . . . has ever been subjected to environmental review. Rather, the record demonstrates that the only environment review conducted related to Westmont's attempts to increase its student enrollment. Increased enrollment was subjected to CEQA review, but construction of the 200,000 square [feet] was not."

Appellant's argument lacks merit for two reasons. First, the adequacy of the prior CEQA environmental review - the 1974 and 1990 negative declarations as well as the 1976 EIR - cannot be challenged because the statute of limitations has expired. (§ 21167; *Temecula Band of Luiseno Mission Indians v. Rancho California Water Dist.*, *supra*, 43 Cal.App.4th at p. 437.)

Second, the 1976 EIR considered not only the impacts of the expansion of student enrollment, but also the impacts of the concurrent expansion of the building area to

³ Appellant states: The methodology used to calculate the 200,000 square feet is not the issue; rather, the issue is that those square feet were never subjected to environmental review." (Bold omitted.)

provide the facilities necessary to accommodate the 400 additional students. The EIR assumed that the future buildings shown on the 1974 Master Plan would be constructed. The EIR stated: "The Westmont Master Plan . . . is designed to accommodate 1200 students *with the additions of the new buildings shown on Figures 15 and 19.*

Construction of these buildings will cause temporary traffic congestion and increased noise." (Emphasis added.) Figure 19 is the 1974 Master Plan. Figure 15 is entitled, "Estimated Westmont Growth 1975-1984." Figure 15 showed that, by the end of 1984, Westmont was expected to have an enrollment of 1200 students and to have constructed the following new buildings: a chapel-auditorium, a student union, a "Science/Classroom," and three 75-bed residential halls. A chart entitled "short-term effects versus long-term productivity" (capitalization omitted) pointed out that one of the short-term effects of the project would be an "increase in traffic and noise during building construction." In addition, the EIR noted that, to "decrease some of the surrounding land-use compatibility problems," Westmont stipulated: "New buildings would be at least 10 yards from [the] nearest property line" and "[n]o additional buildings except those on the [1974] Master Plan will be built."

In any event, even if the correct baseline for the FSEIR were the Westmont campus in its existing condition without the additional 200,000 square feet of future building area, no prejudice would have resulted. As to each environmental issue, the FSEIR analyzed not only "the incremental change in impacts between the [1993] Approved Master Plan at Buildout and the Proposed Master Plan at Buildout," but also "[i]mpacts resulting from the Proposed Plan at Buildout as compared to the existing setting." This procedure was permissible. (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno, supra*, 150 Cal.App.4th at p. 707 [EIR may use a "two-baselines approach" "comparing proposed project impacts to existing conditions and to "build-out under existing zoning"].)

Appellant contends that the FSEIR's "slapdash analysis" of the project's impact on the existing setting was inadequate because "[a]ll it did was add a discussion of what it

felt may be some of the additional impacts if the project was analyzed against the existing setting." The trial court reached a different conclusion: "[E]ven if the FSEIR's *naming* of the approved master plan at buildout as the project's baseline could be considered erroneous, the FSEIR *exhaustively* compared the proposed project with both the existing setting (without the 'dotted line' buildings), and with the master plan at buildout (with the 'dotted line' buildings)."

Appellant has failed to carry its burden of establishing the inadequacy of the FSEIR's analysis of the project's impacts upon the existing setting. Appellant complains that "[t]he Impact Summaries for all the Environmental Impact Analyses in the FSEIR specifically state that they are solely 'based on the incremental difference between the Approved Master Plan at Buildout and Proposed Master Plan at Buildout.'" (Bold omitted.) As an example, appellant cites the summary for view impacts at page 2041 of volume 4 of the administrative record. Appellant correctly characterizes this impact summary as discussing only the incremental differences between the two plans at buildout. But the summary is preceded by a detailed discussion of the view impacts, including a two-page analysis comparing them against the existing setting. The FSEIR proposes measures "required to minimize" the view impacts "as compared to either the existing setting or the Approved Master Plan at Buildout." These measures "would reduce the potentially significant impact on views associated with the Proposed Master Plan at Buildout, as compared to either the existing setting or the Approved Master Plan at Buildout, to a less than significant level."

The FSEIR's procedure for analyzing view impacts was followed in its analysis of the other environmental impacts. Thus, irrespective of the scope of the impact summaries, the FSEIR was " 'prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.' " (*Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1467.) No more was required: "

'The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.' [Citation.]" (*Ibid.*)

"No Project" Alternative

"CEQA requires discussion of project alternatives in order to provide decision makers and the public with a reasonable picture of the range of feasible choices with lesser environmental impacts. [Citation.] Every EIR must include a 'no project alternative' in order to 'allow decisionmakers to compare the impacts of approving the proposed project with the impacts of not approving the proposed project.' [Citation.]" (*Woodward Park Homeowners Ass'n, Inc. v. City of Fresno, supra*, 150 Cal.App.4th at p. 697.) "The question of whether the EIR included a correct no-project analysis [is] a question of law" (*Id.*, at p. 717.)

Appellant contends that, as the "no project" alternative, the FSEIR erroneously selected the 1993 approved Master Plan at buildout. Appellant argues that it should have selected the Westmont campus in its existing condition. The CEQA guidelines (Cal.Code Regs., tit. 14, § 15000 et seq.) indicate otherwise: "When the project is the revision of an existing land use or regulatory plan, policy or ongoing operation, the 'no project' alternative will be the continuation of the existing plan, policy or operation into the future. Typically this is a situation where other projects initiated under the existing plan will continue while the new plan is developed. Thus, the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan." (Guidelines, § 15126.6, subd. (e)(3)(A).)

We consider Westmont's proposed Master Plan to be a revision of the 1993 approved Master Plan. Accordingly, the appropriate "no project" alternative is the 1993 approved Master Plan with the additional 200,000 square feet of future building area permitted under that plan.

Even if the correct "no project" alternative were the Westmont campus in its existing condition, this error would not have rendered the FSEIR deficient because of its detailed analysis of the environmental impacts on the existing setting. (See *Woodward*

Park Homeowners Assn., Inc. v. City of Fresno, supra, 150 Cal.App.4th at p. 714 [where EIR adequately compares project impacts against existing setting, agency may have discretion to minimize "the examination of existing physical conditions in the *no project* discussion, since a comparison of the project with existing physical conditions would already be in the document"].)⁴

Disposition

The judgment is affirmed.

NOT FOR PUBLICATION

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

⁴ Since we reject appellant's "no project" alternative argument on its merits, we need not consider Westmont's contention that appellant failed to exhaust its administrative remedies by not raising the issue during the administrative proceedings. (Westmont RB 51)

Thomas P. Anderle, Judge
Superior Court County of Santa Barbara

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